

FILED
STATE OF CALIFORNIA
RESPIRATORY CARE BOARD
SACRAMENTO FEBRUARY 6 2006
BY JPICALLA ANALYST

BILL LOCKYER, Attorney General
of the State of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Legal Representatives for Complainant

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Against:

FRANK J. PERRY
4802 Haley Drive
Castro Valley CA 94546

Respiratory Care Practitioner No. 22674

Respondent.

Case No. R-2013

ACCUSATION AND
PETITION TO
REVOKE PROBATION

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 31, 2002, the Respiratory Care Board issued Respiratory Care Practitioner License Number 22674 to Frank J. Perry (Respondent). The Respiratory Care Practitioner License was in effect at all times relevant to the charges brought herein and will expire on August 31, 2007, unless renewed.

DISCIPLINARY HISTORY

3. On April 21, 2004, the Board filed Accusation No. R-1890 against respondent based on his June 20, 2003 positive test for amphetamine and methamphetamine and

1 arrest for violating Health & Safety Code section 11550, being under the influence of drugs.
2 Effective July 22, 2004, the Board issued a decision adopting a stipulation in which Respondent's
3 Respiratory Care Practitioner was revoked. However, the revocation was stayed and
4 Respondent's license was placed on probation for a period of two (2) years with certain terms and
5 conditions. A copy of that decision is attached as **Exhibit A** and is incorporated by reference.

6 JURISDICTION

7 4. This Accusation and Petition to Revoke Probation is brought before the
8 Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the
9 following laws. All section references are to the Business and Professions Code unless otherwise
10 indicated.

11 5. Section 3710 of the Code states: "The Respiratory Care Board of California,
12 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
13 Respiratory Care Practice Act]."

14 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,
15 and revoke licenses to practice respiratory care as provided in this chapter."

16 7. Section 3750 of the Code states:

17 "The board may order the denial, suspension or revocation of, or the imposition of
18 probationary conditions upon, a license issued under this chapter, for any of the following
19 causes:

20 "(g) Conviction of a violation of any of the provisions of this chapter or of any
21 provision of Division 2 (commencing with Section 500), or violating, or attempting to
22 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
23 violate any provision or term of this chapter or of any provision of Division 2
24 (commencing with Section 500).

25 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
26 substantially related to the qualifications, functions, or duties of a respiratory care
27 practitioner."

28 ///

1 8. Section 3750.5 of the Code states:

2 "In addition to any other grounds specified in this chapter, the board may deny,
3 suspend, or revoke the license of any applicant or license holder who has done any of the
4 following:

5 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
6 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or
7 administered to another, any controlled substances as defined in Division 10 (commencing with
8 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
9 (commencing with section 4015) of Chapter 9.

10 "(b) Used any controlled substance as defined in Division 10 (commencing with
11 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
12 (commencing with section 4015) of Chapter 9.

13 9. California Code of Regulations, title 16, section 1399.370, states:

14 "For the purposes of denial, suspension, or revocation of a license, a crime or act
15 shall be considered to be substantially related to the qualifications, functions or duties of
16 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
17 perform the functions authorized by his or her license or in a manner inconsistent with the
18 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
19 those involving the following:

20 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
21 abetting the violation of or conspiring to violate any provision or term of the Act.

22 FIRST CAUSE TO REVOKE PROBATION

23 (Possession and use of controlled substance; dishonesty; abstention from drugs)

24 10. At all times after the effective date of Respondent's probation, Condition 3
25 of the Decision and Order in Case No. R-1890 stated:

26 "Respondent shall completely abstain from the possession or use of alcohol, any
27 and all other mood altering drugs, substances and their associated paraphernalia,
28 except when the drugs are lawfully prescribed by a licensed practitioner as part of

1 a documented medical treatment.”

2 11. Respondent’s probation is subject to revocation because he failed to
3 comply with Probation Condition 3, referenced above. The facts and circumstances regarding
4 this violation are as follows:

5 A. Respondent was informed that the Board had contracted with
6 Compass Vision Inc. (CVI) to perform random testing, collection and analysis of biological
7 fluids. On September 6, 2005, respondent provided a urine sample to CVI for testing.
8 Respondent’s sample was positive for amphetamines at a level of 500 nanograms per milliliter.

9 B. On September 30, 2005, Kevin Masuda, respondent’s probation
10 monitor, received a telephone call from respondent wherein respondent admitted that he had used
11 methamphetamine prior to the September 6, 2005 drug test.

12 C. On December 23, 2005, respondent was requested to provided a
13 urine sample to CVI for testing. He failed to appear.

14 D. On December 30, 2005, respondent provided a urine sample to
15 CVI for testing. Respondent’s sample was positive for amphetamines at a level of 760
16 nanograms per milliliter.

17 E. On or about September 21, 2005, respondent completed a
18 Quarterly Report of Compliance under penalty of perjury for the reporting period July 1 through
19 September 30, 2005. He answered “yes” to the question, “Have you complied with every term
20 and condition of your probation?”; however at the time respondent completed the questionnaire,
21 he was aware that he was in violation of Probation Condition 3 because he admitted that he had
22 used methamphetamine prior to the September 6, 2005 drug test.

23 12. Therefore, Respondent is in violation of code sections 3750.5(a)
24 [possession of a controlled substance], 3750.5(b) [use of a controlled substance], 3750(j)
25 [dishonesty] and Probation Condition 3 in that he failed to appear for testing when requested to
26 do so, and he has two positive tests for amphetamines. Also, he falsely stated that he was in
27 compliance with all terms of his probation when he tested positive for amphetamines.

28 ///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking the probation that was granted by the Respiratory Care Board of
5 California in Case No. R-1890 and imposing the disciplinary order that was stayed thereby
6 revoking Respiratory Care Practitioner License No. 22674 issued to Frank J. Perry;

7 2. Revoking or suspending Respiratory Care Practitioner License No. 22674,
8 issued to Frank J. Perry;

9 3. Ordering Frank J. Perry to pay the Respiratory Care Board the costs of the
10 investigation and enforcement of this case, and if probation is continued or extended, the costs of
11 probation monitoring;

12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: February 6, 2006

15
16 
17 STEPHANIE NUNEZ
18 Executive Officer
19 Respiratory Care Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant

23
24
25
26
27
28
SF2005401818
40074913.wpd